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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,039	02/20/2002	Jack J. Richards	4244P2431	9546
23504	7590	12/01/2004	EXAMINER	
WEISS & MOY PC 4204 NORTH BROWN AVENUE SCOTTSDALE, AZ 85251			JUSKA, CHERYL ANN	
		ART UNIT	PAPER NUMBER	
		1771		

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/082,039	RICHARDS, JACK J. <i>JH</i>
	Examiner Cheryl Juska	Art Unit 1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 August 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-31 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 23-26 and 29-31 is/are allowed.
- 6) Claim(s) 1-9, 11-22, 27, and 28 is/are rejected.
- 7) Claim(s) 10 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed August 18, 2004, has been entered. Claims 1-23, 27, and 29 have been amended as requested. New claims 30 and 31 have been added. Thus, the pending claims are 1-31.
2. Said amendment is sufficient to withdraw the 103 rejection of claim 29 over Poettgen since the claimed method step of providing a blackout and thermal drapery is not obvious over Poettgen's teaching of making a surgical drape. Similarly, said amendment is sufficient to overcome the 103 rejection of claims 23-25 over Miller since the claimed method step of providing a blackout and thermal drapery lining is not obvious over Miller's teaching of providing an automobile windshield screen.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 18-22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Re. 34,816 issued to Poettgen as set forth in section 5 of the last Office Action.
5. Claims 11, 13-17, and 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over WO 83/00356 issued to Ryan et al., in view of US 5,902,753 issued to DeMott et al. and US 5,741,582 issued to Leaderman et al., for the reasons of record.

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6. Claims 1 and 4-9 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,790,591 issued to Miller in view of US 5,902,753 issued to DeMott et al. and US 5,741,582 issued to Leaderman et al., for the reasons of record.

7. Claims 12 and 28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Ryan, DeMott, and Leaderman references as applied to claim 11 above, and in further view of US 4,560,245 issued to Sarver, for the reasons of record.

8. Claims 2 and 3 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Miller, DeMott, and Leaderman references as applied to claim 1 above, and in further view of US 4,560,245 issued to Sarver, for the reasons of record.

*Allowable Subject Matter*

9. Claim 10 stands objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. See section 10 of the last Office Action.

10. Claims 23-26 are allowed. The prior art does not teach or fairly suggest the claimed method of making a drapery lining comprising the steps of (a) providing a film, (b) metallizing both sides of said film, (c) coating both sides of said metallized film with a layer of acrylic latex to provide a blackout and thermal drapery lining.

11. Claim 29 is allowed. The prior art does not teach or fairly suggest the claimed method of making a drapery comprising the steps of (a) providing a film, (b) metallizing both sides of said film to provide a light impermeable metallized film, (c) providing a first layer of fabric, (d) coupling the fabric to said light impermeable metallized film, (e) providing a second layer of

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fabric, and (f) coupling said second layer of fabric to the other side of the metallized film to provide a blackout and thermal drapery lining.

12. Claims 30 and 31 are allowed. Said claims include the subject matter of claims 10 and 26 in independent form. See section 10 of the last Office Action.

*Response to Arguments*

13. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.

14. Applicant argues the rejections based upon Poettgen by asserting the change of the phrase "blackout and thermal drapery" from the preamble to the body of the claim is sufficient to distinguish the present invention over the prior art. However, said amendment is not sufficient to overcome the rejection. Specifically, said phrase is still descriptive of an intended use. The surgical drape of Poettgen is still capable of use as a drapery. Yet, as noted above, said amendment is sufficient to overcome the rejection of method claim 29 since the active method step of "providing a blackout and thermal drapery" is not obvious over Poettgen's teaching of a surgical drape.

15. With respect to claims 11, 13-17, and 27, applicant argues Ryan teaches roller blinds rather than the claimed blackout and thermal drapery. The examiner respectfully disagrees. Specifically, Ryan teaches at page 8, lines 2 and 12-16 the invention is drawn to curtains or blinds. It is the examiner's position that curtains are equivalent to drapes. Additionally, Ryan teaches that when the blinds are pulled down or the curtains drawn, they block out sunlight and

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provide insulation (page 10, lines 7-11). Thus, Ryan is analogous art to the claimed blackout and thermal drapery.

16. Applicant also argues the prior art does not teach the metallized film is light impermeable. In response, it is argued that like materials cannot have mutually exclusive properties. In other words, the prior art possesses the same structure of a metallized film. As such, it must provide the same property of light impermeability. The burden is upon applicant to prove otherwise.

17. With respect to the Leaderman reference, applicant asserts the reference is drawn to a lining with pigments and not a drapery. Applicant argues Leaderman's use of pigment to provide light impermeability rather than the claimed metallized film. In response, it is argued that Leaderman is not relied upon to teach the metallized film layer. This feature is taught by the primary reference, Ryan.

18. In response to applicant's assertion that the three-way combination of Ryan, Leaderman, and DeMott does not teach the claimed light impermeable film, it is reiterated that Ryan teaches the same metallized film which possesses light impermeability.

19. With respect to the Miller rejections, applicant again argues the change from preamble to body of the claim for the phrase "blackout and thermal drapery." In response, it is reiterated said phrase is still descriptive of an intended use. Miller's vehicle windshield screen is capable of use as a blackout and thermal drapery.

20. With respect to the rejections based upon Sarver, applicant repeats the argument that the prior art is not a blackout and thermal drapery. Once again, it is argued said phrase is intended use. A recitation of the intended use of the claimed invention must result in a structural

difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In the present case, the structural limitations of the claims are met and the prior art is capable of acting as a blackout and thermal drapery. Hence, said rejections are maintained.

***Conclusion***

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

23. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHERYLA. JUSKA  
PRIMARY EXAMINER